

REMARKS

The specification, drawings, and abstract have been amended to make editorial changes therein, bearing in mind the criticisms in the Official Action, to place the application in condition for allowance at the time of the next Official Action.

The declaration is believed to be acceptable. MPEP §602.2 states that a new oath must properly identify the application, "preferably by giving the application number and date of filing" (emphasis added). Alternative methods of identification are available as explained at the end of §602, which provides several combinations of information supplied in an oath or declaration filed after the filing date of the application that are acceptable as minimums for identifying a specification. Compliance with any one of the items complies with the identification requirement of 37 CFR 1.63. One choice is the attorney docket number which was on the specification as filed. The attorney docket number on the specification as filed, 98 P 1061, is also on the declaration. Therefore, the declaration should be acceptable. In addition, the declaration identifies the application by its International Application number. Since the present application is a national stage of the international application, the International Application number is also suitable identification.

The Official Action objects to the form of the claims, and the claims have been amended as to form. Reconsideration and withdrawal of the objection are respectfully requested.

Claims 1-4 were rejected as unpatentable over TIMM et al. EP 0 806 852 A2 in view of HODGE et al. 5,594,491. Claim 1 has been amended to include the subject matter of claim 3 and reconsideration and withdrawal of the rejection are respectfully requested.

Amended claim 1 includes the steps of displaying on the user terminal a plurality of bandwidths that can be selected, transmitting the bandwidth selection to the network management system, transmitting the data with the selected bandwidth, and communicating billing data in a manner dependent on the selected bandwidth. In other words, the user is given the opportunity to select a transmission bandwidth on the user terminal prior to transmission, where the cost for the communication is commensurate with the bandwidth selected (e.g., the smaller the bandwidth, the lower the cost).

TIMM et al. disclose a system in which modems at the user terminal and the central office negotiate a data transmission rate. The transmission rate preference at the user terminal depends on line condition, hardware capability and user choice of application requirements, while the transmission rate preference at the central office depends on the line condition and the traffic load. Rate change during a session is allowed

due to line condition change or user choice, where the user choice refers to the choice of application requirements (page 12, lines 53-59). As further explained at page 14, lines 36-48, the negotiation process is designed to optimize throughput. "Ideally, the transceivers at each end can monitor the channel and maximize their throughput as conditions vary" (page 14, lines 42-43). The reference does not disclose or suggest giving the user an opportunity to select a particular bandwidth by any means; the selection is handled by the modems as part of a negotiation process that is on-going and automatic. Further, there is no suggestion in the reference to relate the bandwidth to a charge for the use of the bandwidth. Indeed, in TIMM et al., there is nothing that ties billing to bandwidth.]

The Official Action relies on HODGE et al. for the suggestion to modify TIMM et al. to include the missing elements. This reference discloses a video-on-demand (VOD) system that uses ADSL, where the ADSL provides a large bandwidth from server to user and a smaller bandwidth from user to server (column 1, lines 25-27). As stated at column 5, lines 12-17, the settop box uses the smaller bandwidth to report transaction to the billing server. However, the system in the reference does not offer a bandwidth selection at the user terminal and does not indicate that a billing rate is related to a selected bandwidth.

Accordingly, the suggested combination of references does not disclose or suggest the steps in amended claim 1 of

displaying on the user terminal a plurality of bandwidths that can be selected, transmitting the bandwidth selection to the network management system, transmitting the data with the selected bandwidth, and communicating billing data in a manner dependent on the selected bandwidth. In view of this, the rejection under §103 should be withdrawn.

New claim 6 has been added and is believed to be allowable for the reasons given above. The proposed combination of references does not disclose or suggest the steps of displaying on the user terminal a plurality of bandwidths that are available for selection, the plurality of bandwidths including a maximum bandwidth that can be selected dependent on the network capabilities and at least one bandwidth less than the maximum bandwidth; at the user terminal selecting one of the plurality of bandwidths and transmitting the selected bandwidth to the network management system; transmitting information between the server and the user terminal via the ADSL connection in a manner consistent with the selected bandwidth; and the network management system communicating billing data related to the transmission between the server and the user terminal to a billing device for the server, the billing data being based on the selected bandwidth.

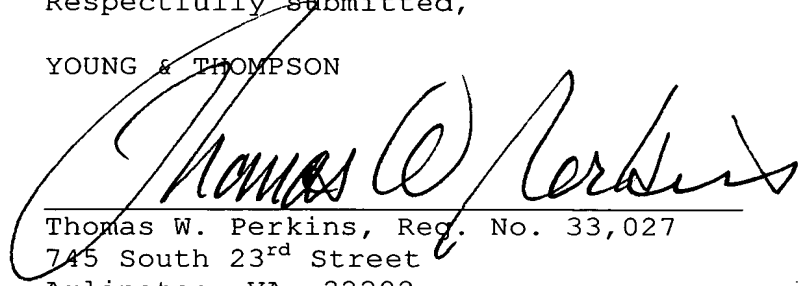
In view of the present amendment and the foregoing remarks, it is believed that the present application has been

placed in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

A large, stylized handwritten signature in black ink, which appears to read "Thomas W. Perkins". The signature is written over a horizontal line that separates it from the printed contact information below.

Thomas W. Perkins, Reg. No. 33,027
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

TWP/lk